

THE PROPOSED INTERNATIONAL TRIBUNAL OF ARBITRATION OF 1623.

By THOMAS WILLING BALCH.

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The approaching second Hague Peace Conference, at which it is proposed to discuss the possibilities of placing some limit on the expansion of armaments, calls public attention again to the evolution and development of one of the most beneficent of human institutions—international arbitration. The first glimmers of humanity seeking to avoid the horrors entailed by war are lost in the haze of early history. Probably we shall never know with whom the idea of international arbitration originated. One of the earliest written expressions of the wish to escape the arbitrament of arms was given by the prophet Micah, who was born about 750 B. C., when he said:

“And He shall judge among many people, and rebuke strong nations afar off; and they shall beat their swords into plow-shares, and their spears into pruning-hooks: nation shall not lift up a sword against nation, neither shall they learn war any more.”

And a little later the prophet Isaiah said:

“And He shall judge among the nations, and shall rebuke many people; they shall beat their swords into plow-shares, and their spears into pruning-hooks: nation shall not lift up sword against nation, neither shall they learn war any more.”

The Greeks made some attempts at arbitration among themselves, notably in an agreement between the Lacedaemonians and the Argives. But with the “barbarians” who formed the rest of the world, the Greeks, apparently, would not arbitrate. For a long time the Romans as the masters of the world maintained peace by force of arms but not by arbitration.

In the twelfth century Gerohus¹ or Gerloius is said to have suggested something like arbitration; and in the reign of Philippe le Bel of France (1285–1314), Pierre Dubois is believed to have out-

¹“International Tribunals,” by W. Evans Darby, London, 1904, p. 22.

lined a plan intended to maintain to some extent peace in Europe. He restricted this, however, to the Christian Powers: the so-called Infidels were to be outside of its pale. Indeed, those individuals who would not accept the decree of Dubois's proposed peace board were to be impressed into fighting the Infidels.

An early proposer of modern international arbitration was a Frenchman, *Éméric Crucé*. He is still almost unknown, except to a few international jurists. He was born at Paris about 1590 and died in 1648. He published a number of works in Latin, but so little is known about him that, until 1890, when Judge Ernest Nys,¹ *Conseiller à la cour d'Appel* of Brussels, a Belgian member of The Hague Permanent Tribunal of Arbitration, and a scholar of the highest type, restored to *Éméric Crucé* his true name, publicists called him *Emery de la Croix*. In 1618 *Crucé* printed an annotated copy of *Stattius*. That publication gave rise to a violent contemporaneous discussion, which was the means through which Judge Nys discovered *Crucé's* real name.

"If we cite this polemic it is because," Judge Nys says, "it allows us to know the exact name of the author of [*Le Nouveau Cynée*']. The few ancient authors who speak of him call him generally '*Emericus Crucejus* or *de La Croix*'; modern biographers call him, '*Emeric de la Croix*.' The fact is his name is *Éméric Crucé*, from which came the Latinized name of *Crucaeus*. Doubt is not possible, and we find a formal indication of this in the anagram that the '*Silvarum frondatio*' contains, whose author was *Antoine Dorcal*, barrister of Paris. Here is the text:

"Anagramma in Autorem Hujus Frondationis
Emericus Cruce
Ecce Mercurius.

Ne temere in Silvis Statianis lector oberres,
Ecce vialis adest hic tibi Mercurius."

"We can mention here that it was probably to the translator of the '*Bibliographia politica*' of *Gabriel Naudé* that we owe the attribution to the author of '*Le Nouveau Cynée*' of the name of *de La Croix*. *Naudé* writes correctly *Emericus Crucaeus*; the translator, *Charles Challine*, gives *Emery de la Croix*.

"The edition of the works of *Stattius* is dedicated to *Henri Godfroy*; the notes on the *Thebaïd* of the same poet are dedicated to *Guillaume Ribier*, councillor of State, president and lieutenant-general at *Blois*; finally, the '*Silvarum frondatio*' is preceded by a letter addressed to *Henri Le Clerc*

¹"*La Revue de Droit International et de Législation Comparée*," Brussels, 1897.

du Tremblay, councillor of the *parlement* of Paris, a brother of the councillor of Cardinal de Richelieu, François Le Clere du Tremblay, known to history by his religious name of Father Joseph."¹

The work which should sooner or later make Éméric Crucé famous and in which he proposed an International Court of Arbitration between nations, he published at Paris in 1623, "Avec Privilège du Roy." It was entitled: "Le Nouveau Cynée ou Discours d'Estat."

This book is small, but it is filled with much reasoning. In the preface Crucé says: "This book would gladly make the tour of the inhabited world, so as to be seen by all the Kings, and it would not fear any disgrace, having truth for its escort, and the merit of the subject which must serve as letters of recommendation and credence."

Éméric Crucé held, especially for the times in which he lived, broad and liberal views. He believed that it was for the advantage of humanity that the different races and nations should not seek to injure and destroy one another by war, but rather to exchange their varied products. While he could not see as clearly as it is possible to-day that international trade is the power behind the throne of international peace, yet he realized that the development of international commerce would tend, by making countries more interdependent, to cause wars to grow less frequent. In this he agreed with the view expressed by Washington in a letter which the greatest of our Presidents wrote to la Fayette. Crucé favored the development of canals as a means of communication, an item of national policy that the Western nations of Europe have now largely adopted, and one which the growing needs of cheap and easy communications is bringing more prominently before public opinion here. He was also an ardent supporter of religious toleration.

Crucé believed that general peace is possible. But, he saw and proclaimed with a clear vision that as a prerequisite to the peaceful settlement of international disputes, some sort of machinery to dispose of international disputes was necessary. With this in view, he proposed "to choose a city where all sovereigns should have

¹ "Etudes de Droit International et de Droit Politique," by Ernest Nys, Brussels, 1896, p. 308.

perpetually their ambassadors, in order that the differences that might arise should be settled by the judgment of the whole assembly. The ambassadors of those who would be interested would plead there the grievances of their masters and the other deputies would judge them without prejudice. . . . That if any one rebelled against the decree of so notable a company, he would receive the disgrace of all other princes, who would find means to bring him to reason. The most commodious place for such an assembly is the territory of Venice, because it is practically neutral and indifferent to all Princes: added thereto that it is near the most important monarchies of the earth."

Crucé contemplated a universal union that should include even Persia, China, Ethiopia, the East Indies, the West Indies, indeed all the world. A delicate question was how to arrange the order of rank and precedence. He suggested as a possible solution of this difficulty the following order and some of the reasons for it:

First: The Pope, in part out of respect for ancient Rome.

Second: The Sultan of the Turks, because of "the majesty, power and happiness of his Empire," and also on account of the memory of the ancient Eastern Empire, of which Constantinople was the capital.

Third: The Christian Emperor.

Fourth: The King of France.

Fifth: The King of Spain.

The claims of the Kings of Persia and China, Prester John, the Precop (*sic*) of Tatar, and the Grand Duke of Moscow, must be arranged. Next the importance and order of precedence of the Kings of Great Britain, Poland, Denmark, Sweden, the Monarchs of Japan and Morocco, the Great Mogul and the other sovereigns demanded attention. Among other expedients, Crucé proposed to give the first place to the first comer, or to the oldest, or again *à tour de rôle*.

He was not blind to the fact that without the initiative of some one a nearer approach to international peace could never become a reality. In his opinion two potentates, the Pope and the King of France, could broach the subject to the sovereigns of the world, the former to the Christian princes, the latter to the Mohammedan

rulers. "Only let them publish peace by the order of the King!" Crucé wrote. "Those words will make them drop their arms from their hands."

Here again we find that history has repeated itself. In 1623 Éméric Crucé wanted the King of France to move in favor of universal peace. In 1898 it was the Emperor of Russia that called upon the Powers to send representatives to the Peace Conference that met the next year at The Hague. And while it was almost three centuries before the International Court that Crucé proposed became an actual fact, and two great wars have been fought since the Emperor Nicholas called the first Hague Conference together, yet—owing to the institution *ad hoc* before 1899 of International Courts of Arbitration to meet certain cases, such as those of the Alabama Claims and the Bering Sea Fur Seal Fisheries, and since 1899 by the establishment of the Permanent Hague Tribunal—some wars at least have been avoided.

The *Grand Dessein* attributed to Henry of Navarre, but very likely a product of the Duc de Sully's imagination, is often cited as the first serious project of international arbitration. Sully's Memoirs, which give us everything we know about the *Grand Dessein*, were not published until 1638, or fifteen years after Éméric Crucé had given to the world his plan for the establishment of an International Court at Venice. But in addition, whether the *Grand Dessein* was an actual historic fact or not, that plan, attributed by the Duc de Sully to his sovereign, Henry the Fourth, was not drawn so as to settle the differences of the European nations by means of arbitration, but to overthrow as the dominating power of Europe the House of Hapsburg by means of a league of the other European states, at the head of which would be the King of France. The basic thought of the *Grand Dessein* was not peace but armed force: its purpose was well expressed by the lines of Wordsworth in "Rob Roy's Grave":

"The good old rule
Sufficeth them, the simple plan,
That they should take who have the power,
And they should keep who can."

The proposal of Éméric Crucé for an International Court bore good fruit. Gabriel Naudé in his "Bibliographia Politica" (1642)

mentions *Le Nouveau Cynée*, "done rather for recreation of the mind," he says, "than on account of any opinion that the writer had that the advice that he gives can ever succeed." Again, in 1664, Charles Sorel writes: "There is a book called '*Le Nouveau Cynée*,' which gives reasons for the establishment of a general peace and freedom of trade through all the world. One imagines that something additional is necessary to make it a success, but the design is always beautiful and bold." Later still, Leibniz, in a letter that he wrote to l'Abbé Castel de Saint Pierre concerning the latter's "*Paix perpétuelle*," said apropos of Crucé's work: "When I was very young I knew a work entitled '*Le Nouveau Cynée*,' whose unknown author counselled sovereigns to rule their states in peace and to submit their differences to an established tribunal; but I do not know how to find this book and I do not remember now any details. It is known that Cineas was a confidant of King Pyrrhus who advised the latter to rest himself at first, as it was his object, as he confessed it, when he had conquered Sicily, Rome and Carthage."

That mankind was eager to mitigate the horrors of war, and in some measure at least to save itself from the miseries entailed by endless war, was proved by the rapid and complete success of the *magnum opus*, "*De Jure Belli ac Pacis*," of Hugo Grotius. That monumental book, on the "*Laws of War and Peace*," Grotius gave to the world in 1625, two years after Éméric Crucé published "*Le Nouveau Cynée*." Grotius wrote with the view of softening the unspeakably horrible usages of war. That great Captain of the Thirty Years' War, Gustavus Adolphus, carried a copy with him in his campaigns and acted upon many of its principles. And in the peace of Westphalia, in 1648, the leading principles formulated by Grotius were recognized. Grotius lived for a time in Paris, and probably knew Crucé and his work, and possibly gained some of his ideas on international arbitration from the Frenchman's book.

Other men wrote in favor of trying to avoid war. The founder of our own Commonwealth, William Penn, published in 1693 an "*Essay toward the Present and Future Peace of Europe*." He referred with approval to the Grand Dessein of Henry of Navarre, and argued that as England had her Parliament and France her States General to settle their respective affairs, so all Europe should

have its Parliament to arrange international disputes. Then Castel de Saint Pierre, Jeremy Bentham, Emanuel Kant and others wrote in favor of international peace. The great thinker and doer, who founded this venerable society, also believed in international arbitration. In *The Writings of Benjamin Franklin* by our fellow member, Professor Smyth, there is a letter of Franklin to Mrs. Mary Hewson, dated at Passy, in January, 1783, in which he says *inter alia*:¹ "At length we are in Peace, God be praised, and long, very long, may it continue. All Wars are Follies, very expensive, and very mischievous ones. When will Mankind be convinced of this, and agree to settle their differences by Arbitration?" And further there is his famous saying on the merits of peace and war, "There never was a good war, nor a bad peace." Since the beginning of the nineteenth century many jurists and publicists have advocated the adoption wherever it was possible of international arbitration: William Ladd, Charles Sumner, Richard Cobden, Thomas Balch, Francis Lieber, James Lorimer, David Dudley Field, Emile Baron De Laveleye, Ivan de Block, Philip Stanhope, Baron Descamps, the

¹This paper was read before the Society on May 3, 1907: Professor Smyth died the next day, and so the following letter that he wrote only eight days before is not without interest for the members of the Philosophical Society.

THE ART CLUB
OF PHILADELPHIA

April 26th, 1907

My dear Mr. Balch

Franklin says in a letter to Mrs. Mary Hewson (Vol. IX., p. 12, of my edition), "At length we are in Peace, God be praised, and long, very long, may it continue. All Wars are Follies, very expensive and very mischievous ones. When will Mankind be convinced of this, and agree to settle their Differences by Arbitration? Were they to do it, even by the Cast of a Dye, it would be better than Fighting and destroying each other." I would call your attention particularly to Franklin's "Propositions relative to Privateering," communicated to Mr. Oswald (Vol. IX., pp. 4-7). I think you will find quotable matter there. See also letter to David Hartley (Vol. X., p. 72), "God grant that not only the Love of Liberty, but a thorough knowledge of the Rights of Man, may pervade all Nations of the Earth so that a Philosopher may set his Foot anywhere on its Surface, and say, 'This is my Country.'"

Remember Franklin's oft repeated assertion, "There never was a good War or a Bad Peace."

Faithfully yours,

ALBERT H. SMYTH.

Emperor Nicholas the Second, and our own members, Ex-President Cleveland, Andrew Carnegie and the Baron d'Estournelles de Constant. The latter, together with our late fellow countrymen, Frederick W. Holls, a Pennsylvanian by birth, played an important part at the first Hague Peace Conference in 1899 in securing the establishment of The Hague International Tribunal,¹ and is to be one of the chief delegates of France at the second Hague Peace Conference next month.

The past development of international arbitration gives promise for its future usefulness, although grave difficulties are certain to arise in its application. Cases involving rather private than national interests can be solved by arbitration. To this class of cases belonged the Alabama Claims and the Bering Sea Seal Fisheries, and the Dogger Bank Incident. Those disputes were not of such a nature that one of the disputants must give way in order that the progress of the other should not be impeded, as was the case in 1870 between France and Prussia. Neither were those cases legacies growing out of bloody and bitter wars between the contestants. In all three of those cases the litigants were anxious if possible to avoid war, and a resort to Courts of Arbitration, in the first two cases appointed *ad hoc*, in the latter to The Hague Tribunal, enabled them to avoid war honorably. These three cases are concrete proof that international arbitration is possible in some cases. As Mr. Thomas Balch of the Philadelphia Bar wrote in 1874 in "International Courts of Arbitration"² apropos of the Alabama Claims: "The friends of International Courts may fairly assert that this mode of settling great national questions has been fully and successfully tried, that it may be considered as having thereby passed into and henceforth forming a distinct part of that uncertain and shapeless mass of decisions and dicta which we call International Law. Without participating in the visions so grandly developed by Zuinglius, and so fondly cherished by Grotius, of the good time, a good time to be won only by toil and unremitting effort—

"Till the war-drums throb'd no longer, and the battle-flags were fur'd
In the Parliament of man, the Federation of the world."

¹ "The Peace Conference at the Hague," by Frederick W. Holls, New York, 1900.

² "International Courts of Arbitration," by Thomas Balch, 1874, reprinted at Philadelphia, 1899, p. 23.

we may reasonably expect that through such tribunals, through their proceedings and decisions, and not through empirical codes, we may ultimately arrive at some more tangible and better ordered system of International Law; one to which the assent of civilized peoples may be given greatly to the benefit and peace of mankind."

In this series of cases the disputing nations thought that the questions at issue were not of sufficient importance to make it worth their while to dislocate all their national wealth and prosperity in resorting to the drastic and uncertain arbitrament of war. But in an international quarrel over the possession of vast territory, such as the war between Russia and Japan for the control of Northern China, different interests much more difficult to deal with are involved. In that case the bone of contention seemed to both sides so rich and also so fundamental to their national interests that neither would agree to give way in the least particle, and war had to result.

The many international questions submitted to arbitration since the United States and England agreed to arbitrate the Saint Croix River boundary in 1794 prove that some international difficulties can be arranged by peaceful means, and that Éméric Crucé was not altogether visionary in his ideas. Though the changes wrought in recent years by force of arms in the affairs of the world prove that war has lost little of its influence upon human affairs and that it remains the last resort in settling international quarrels, yet the Alabama Claims, the Bering Sea Fur Seal Fisheries, and the cases that have been settled by The Hague Tribunal since it was established, give hope and encouragement for the future peace of the world.

In the evolution of international peace Éméric Crucé played an important part; he deserves to be much better known than he is; and his name should be given a high place among those of the men who have helped to settle, in some measure, international disputes by judicial instead of martial means. For in the early part of the seventeenth century Éméric Crucé's proposal for setting up at Venice an International Court to judge between the sovereigns of the world was a rough sketch of The Hague Permanent Tribunal instituted in 1899. Probably, not until long after 1623, did any *irenist*, to use the happy word coined by the Abbé de Saint Pierre

to designate a worker for international peace, suggest a plan as practical for promoting the advent of international peace as that put forward by the obscure and all but forgotten Parisian scholar.

The world is apt to give fame to the military destroyer or the government official and not to the scholar or the scientific discoverer. In these latter days, when some note is taken of the men who have sought to evolve a human institution that should at least lessen the frequency of wars, with the ultimate aim perhaps of abolishing them altogether, credit is usually given to those who hold government positions, while the share of the scholar is as apt to be forgotten as the work of the skilled workman who turns the precious, uncut stone into the brilliant gem. This has happened, for instance, in the case of the Alabama Arbitration. And among the savants and original thinkers who have not received their just due in advancing the peace of the world is Éméric Crucé, who is one of the forebearers of The Hague International Tribunal of Arbitration.